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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 97

THE BALTIMORE AND OHIO RAILROAD COMPANY, CANTON RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, NORFOLK AND WESTERN RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, READING COMPANY, AND WESTERN MARYLAND RAILWAY COMPANY,

Appellants,

v.

BOSTON AND MAINE RAILROAD, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR APPELLANTS

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OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (WOODBURY, SWEENEY and FORD, JJ.) is officially reported in 202 F. Supp. 830 and is printed in the record at pp. 3994-4005. The final judgment of the District Court, dated February 23, 1962, is in the record at p. 4006. The reports of the Interstate Commerce Commission (hereinafter referred to as the Commission) dated

December 5, 1960, and June 15, 1961, respectively, are *Equalization of Rates at North Atlantic Ports*, 311 I.C.C. 689 and 314 I.C.C. 185, respectively. They are also printed in the record at pp. 3738-3820 and pp. 3836-3857. The order of the Interstate Commerce Commission dated December 5, 1960, appears at p. 3821 of the record. The order of the Commission dated March 7, 1961, correcting one of the findings in the report of December 5, 1960, is at p. 3822.

JURISDICTION

This action was brought under 28 U.S.C. §1336 to set aside and enjoin an order of the Interstate Commerce Commission. The judgment of the District Court enjoining the order of the Commission was entered on February 23, 1962, and these appellants filed their notice of appeal in that court on March 30, 1962. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by 28 U.S.C. 1253 and 2101(b). On June 11, 1962, this Court noted probable jurisdiction (R. 4027). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case. *Virginian Railway v. United States*, 272 U.S. 658; *United States v. Pennsylvania Railroad Company*, 323 U.S. 612.

STATUTES INVOLVED

The statutory provisions involved, the National Transportation Policy (49 U.S.C. preceding §§1; 301, 901, 1001) and Sections 1(5), 3(1), 4(1), 15(1), 15(7), and 15a(2) (49 U.S.C. §§1(5), 3(1), 4(1), 15(1), 15(7), and 15a(2)) of the Interstate Commerce Act, as amended, are set forth in Appendix A hereto.

THE QUESTION PRESENTED

Did the District Court err (1) in overruling a decision of the Interstate Commerce Commission which rejected as unlawful a proposal on the part of certain railroads serving the ports of New York, Boston, Albany, and Portland to destroy a differential rate relation that has obtained for many years in the movement of import-export traffic between the named ports and Philadelphia, Baltimore, and Hampton Roads *and* so-called differential territory and (2) in requiring the establishment of equalized rates?

STATEMENT OF THE CASE

The basic freight rate relationship here in issue has been in effect for more than 85 years. On import and export traffic moving between North Atlantic Ports and differential territory (the territory generally bounded by the Great Lakes on the north, Buffalo, N.Y., and Pittsburgh, Pa., on the east, the Ohio River on the south, and the Mississippi River on the west)[1] the rates to and from Baltimore are 3 cents and Philadelphia 2 cents per 100 pounds less than New York rates. Boston has the same rates as New York, and from that part of differential territory west of the so-called Sandusky, Ohio, line, Hampton Roads has the same rates as Baltimore. To and from Portland the Baltimore rates also apply to certain import traffic when moving to differential territory over the lines of Canadian railroads. In 1936 Philadelphia rates were prescribed by the Commission on import-export traffic through Albany, N.Y. *Albany Port District Comm. v. Ahnapee & W. Ry. Co.*, 219 I.C.C. 151 (1936).

This rate adjustment has been attacked by various interests at various times, but the Commission, as pointed out

[1] Differential territory is defined more exactly in the original report of the Commission in this case (R. 3740, 3741).

in its decision in this proceeding, has "consistently upheld it as lawful" (R. 3748). Its history is set forth in the briefs of both the Interstate Commerce Commission and the Maryland Port Authority et al. as appellants in these proceedings and need not be repeated here.

In 1956 certain railroads (hereinafter referred to as the northern carriers) serving New York, Boston, Albany, and Portland (hereinafter referred to as the northern tier ports) proposed to reduce their import and export rates to the Baltimore level, and as found by Commission in its decision herein (R. 3739, 3740):

> The purpose of the proposal is *to equalize* the rates, on the Baltimore, Md., basis of rates, on such traffic to and from those ports with the rates on like traffic to and from the ports of Philadelphia, Pa., Baltimore, and the Hampton Roads ports in Virginia, hereinafter called the southern tier ports, and *thus abolish* the so-called port differentials which have obtained in connection with these rates for many years. (Italics supplied.)

No sooner had these reductions been filed with the Commission than the railroads (hereinafter referred to as the southern carriers) serving the southern tier ports proposed matching reductions. As described in the Commission's report (R. 3740):

> This counter proposal, in the event that the respondents' [northern carriers'] proposed rates were found lawful, *would restore the present differentials*, thus maintaining the long standing port relationships, but upon a lower level of rates. (Italics supplied.)

Both schedules of reduced rates were thereupon suspended by the Commission which entered upon an investigation of their lawfulness under the provisions of section 15 (7) of the Interstate Commerce Act. There followed

exhaustive hearings before the Commission's Examiner Boat who, on October 9, 1959, recommended in a detailed report that the Commission require all of the reduced rates to be cancelled. After considering exceptions to this recommendation and replies to the exceptions, the Commission, with only one dissent, adopted the Examiner's view and rejected the equalization of rates proposed by the northern carriers. This was the Commission's original decision (R. 3738-3829).

In taking this action, the Commission first found that the northern carriers had not proven their proposed equalizing rates to be compensatory (R. 3797). It then found that these rates would unduly prefer the longer-haul, higher-cost northern tier ports and unduly prejudice the shorter-haul, lower-cost southern tier ports (R. 3807). The Commission concluded also that the traffic diversion to the port of New York would be "undue" (R. 3806).

A further ground for the Commission's decision was that if the equalizing rates of the northern carriers were approved, the differential-restoring reductions of the southern carriers would also have to be approved, and such "a needless dissipation of carrier revenues" should be forestalled in the interest of "preventing destructive competition and promoting the financial stability of the regulated carriers" (R. 3806).

Action to set aside the Commission's decision was then brought in the United States District Court for the District of Massachusetts by the northern carriers, together with northern tier port and commercial interests. In its answer to the complaint, the United States, as set forth in the opinion of the District Court, admitted that the Commission's order was erroneous "in that it treated the proposal vis-a-vis the northern tier ports as a group and

failed to consider the lawfulness of the proposed rates as to each port separately" (R. 3998). Accordingly, while the District Court held the proceedings in abeyance, the Commission, by order dated April 11, 1961, reopened the proceedings for reconsideration, on the record as made, "of the lawfulness of the proposed rates separately and independently on traffic to and from each of the northern tier ports" (R. 3835, 3836).

Again the Commission rejected the proposed rates (R. 3836-3857).

While in this further consideration by the Commission the issue concerned rates to and from each of the northern tier ports separately, the real question was whether, irrespective of the treatment of New York, Boston was entitled to rates on the lower Baltimore level. The Commission gave a negative answer for two reasons: first, Boston's much greater distances could "not be ignored" "under the circumstances here revealed" including the "geographical, transportation, and cost advantages" of the southern tier ports (R. 3854), and second, lower rates at Boston than at either New York or Albany, N.Y., as intermediate points on important routes "would be in violation of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act" (R. 3852).

With the release of the further decision, the proceedings before the District Court were resumed, and there followed its decision of February 16, 1962, from which this appeal is taken (R. 3994-4005). The District Court concluded "that the Commission's decision is erroneous in law and lacks the rational basis necessary to uphold it and it must be set aside" (R. 4005).

In setting aside the decision of the Commission, the District Court first dealt with the reasonableness of the pro-

posed equalizing rates from the northern tier ports. Overruling the Commission's finding that the northern carriers had failed to prove the proposed equalizing rates to be compensatory, the District Court upheld the rates as reasonable because:

(a) The proposed reductions were for "minimal" amounts (R. 4000).

(b) The average revenues per ton and per ton mile under the proposed rates would exceed the averages for freight traffic in the United States (R. 4001).

(c) The Commission found, as to part of the traffic, that "the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs" (R. 4001).

The District Court next turned to the Commission's affirmative finding of undue preference to the northern tier ports and undue prejudice to the southern tier ports, and again it overruled the Commission. It held that:

(a) The Commission erred "in not giving due weight to the interests of shippers, receivers, carriers, and inland localities" (R. 4003).

(b) The Commission erred in giving weight to the distance disadvantages of the northern tier ports because the differentials were not originally based on distance, greater differences in distance have often been ignored, "the finding in this case, if pressed to its logical conclusion, would result in traffic flowing only through the most distance-favored port. On the other hand, if applied only in this case, the decision is arbitrary and capricious," and in any event, the differences in distance were not supported by findings as to "the cost and value of the services of plaintiff and defendant railroads" and the record did not

"contain evidence from which it could make such findings" (R. 4003, 4004).

(c) The Commission erred in failing to distinguish between rates which carriers may voluntarily publish to meet competition, and those they may be required to publish (R. 4004).

The District Court made no mention of the Commission's finding that if the proposed reductions from the northern tier ports were upheld despite the "firmly established" greater distances and higher costs of service to and from those ports, approval of the lower rates restoring the differentials of the southern tier ports, with their shorter distances and lower costs, would necessarily be required.

Judgment was entered in the District Court on February 16, 1962, setting aside and enjoining enforcement of the Commission's order "insofar as it directs the cancellation of schedules proposing differential-eliminating rates to and from the ports of Portland, Maine, Boston, Massachusetts, Albany and New York, New York, denies forth-section application No. 32204, and prevents differential-eliminating rates from becoming effective" (R. 4006). It is from this judgment that this appeal is taken.

THE ISSUES

Since the District Court held that the Commission's decision had no "rational basis," the issues presented on the present appeal are:

1. Was there a "rational basis" for the Commission's finding that equalizing rates to and from the northern tier ports, with longer distances and higher costs, would unduly prefer such ports and unduly prejudice the southern tier ports, with shorter distances and lower costs, particu-

larly when such equalizing rates threatened "undue diversion" from the southern tier ports to the port of New York?

2. Was there a "rational basis" for the Commission's finding that approval of the northern carriers' equalizing rates "would require alternate approval" of the differential-restoring rates of the southern carriers and that this would entail "a needless dissipation of carrier revenues" which should be avoided in the interest "of preventing destructive competition and promoting the financial stability of the regulated carriers"?

3. Even if the Commission had no "rational basis" for the findings referred to in the foregoing paragraphs, was the District Court justified in setting aside the Commission's finding that the equalizing rates of the northern carriers were not shown to be compensatory and in making its own finding, based on its own evaluation of the evidence, that such rates were just and reasonable?

SUMMARY OF ARGUMENT

When railroads propose to change their rates, they file appropriate tariffs, and the Commission can either allow the tariffs to go into effect or it can suspend them and conduct an investigation pursuant to the provisions of section 15(7) of the Interstate Commerce Act. If, as was the case here, the Commission suspends the tariffs, the proponent carriers have the burden of proving their lawfulness. In its decision the District Court correctly pointed out (R. 2999):

> Under 49 U.S.C. §15(7), the Plaintiffs [northern carriers] had the burden of proof to show that the proposed rates are "just and reasonable" within the meaning of section 1(5), free from unjust discrimination prohibited by section 2 and that they contain no undue preference or prejudice proscribed by section 3(1).

Here, as we have seen, the Commission concluded that the northern carriers had not sustained their burden of proving the proposed equalizing rates to be compensatory. It also found that these rates would cause "undue diversion" of traffic from the southern tier ports, with their shorter distances and much lower costs, to the northern tier ports, with longer distances and much higher costs, particularly the port of New York, and thus result in undue preference and prejudice in violation of the Interstate Commerce Act. A related conclusion was that if the equalizing rates of the northern carriers were approved, "alternate approval" of the differential-restoring rates of the southern carriers would be required, and "this might result in the rates gravitating to their lowest possible level and in a needless dissipation of carrier revenues" which the Commission had an obligation to forestall.

The District Court, as we have also seen, overruled the Commission's conclusions as to (1) the failure of the northern carriers to prove the compensatory character of the equalizing rates and (2) the undue preference of the longer-haul, higher-cost northern tier ports and undue prejudice to the shorter-haul, lower-cost southern tier ports which they would cause. The District Court remained silent as to the differential-restoring rates of the southern carriers.

The Commission's decision is, we submit, correct. The District Court's decision should be reversed.

In the first place, in setting aside the Commission's conclusion as to the failure of the northern carriers to prove their rates to be compensatory and in making its own finding of reasonableness, the District Court cites evidence that has no relation to the issue and misinterprets a statement in the Commission's report that, as to part of the

traffic, "the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs." Moreover, the District Court completely overlooks the significance in this connection of the point blank refusal of the northern carriers to supply for the record before the Commission available cost data of their own and to cooperate in the submission of data where not available — evidence which would throw light on the compensatory or non-compensatory nature of their proposed rates. The District Court also overlooks the unqualified admission of the management of the New York Central, as the principal northern carrier, that freight service to and from New York Harbor was being conducted at a staggering loss, and that import-export traffic was more costly than domestic traffic at that port.

Secondly, in overruling the Commission's finding of undue preference and prejudice, the District Court begins by misunderstanding the grounds upon which the Commission acted. It says that the greater distance of the northern tier ports was the "single" or "sole" consideration which guided the Commission, but this was not so. "Undue diversion" from the shorter-haul, lower-cost southern ports to the longer-haul, higher-cost northern ports was an equally important reason for the Commission's decision. The District Court does not deal with this reason. Moreover, in its rejection of distance as a factor to be considered, the District Court would decide in effect that the transportation standard has no proper place in determining relationship issues under section 3 of the Interstate Commerce Act. The one qualification that the District Court would allow in this connection is when "Distance differences * * * reflect differences in the cost and value of the services * * *." Apparently, the District Court is unaware of the enormous amount of cost evidence in the record and the findings of the Commission that (R. 3805, 3806):

> The greater distance of the northern tier ports from the affected territory, and the higher costs of service to and from those ports, are firmly established.

Thus, even under the test applied by the District Court the Commission's use of distance as one reason for disallowing the equalizing rates of the northern carriers was proper. The further ground for the Commission's decision was, of course, the "undue diversion" to the port of New York — a ground which the District Court does not really discuss. If the one competitive advantage of the southern tier ports is eliminated, there would be nothing to prevent a wholesale diversion of traffic to the port of New York. For years New York has been the self-advertised and acknowledged "World's Greatest Port" (R. 2514-2534). Under the decision of the District Court it would quickly become a monopoly.

Thirdly, as a separate ground for its rejection of the equalizing rates of the northern carriers, the Commission referred to its obligation under the Interstate Commerce Act to prevent destructive competition and to promote "the financial stability of the regulated carriers." The exercise of this power was necessary because of the Commission's conclusion that (R. 3806):

> approval of respondents' [northern carriers'] proposed rates would require alternate approval of protestants' [southern carriers'] proposed rates.

The result would be "a needless dissipation of carrier revenues," and the Commission was obviously correct in preserving the approved differential adjustment at its present higher level.

The District Court does not deal with this ground for the Commission's decision. It says merely that in this case "the primary issue is whether equalization is necessary to

enable the plaintiff northern railroads to compete" (R. 4005). The District Court does not explain how the right to compete on the part of the northern carriers can be any greater than the right to compete on the part of the southern carriers.

Lastly, in the final stages of the proceeding before the Commission the port of Boston sought rates equalized with Baltimore's even though New York could not qualify for the same rates. As a practical matter, this would mean lower rates at the further distant port of Boston than at the intermediate ports of New York, Albany, and Philadelphia. Such a situation would create over important routes and departures from the long-and-short-haul clause of section 4 of the Interstate Commerce Act and thus be unlawful. In addition, on the only type of traffic that Boston could hope to attract its present rates are admittedly noncompensatory. Lower rates would only increase the loss.

ARGUMENT

In supporting the decision of the Commission and in challenging its reversal by the District Court, the argument in this brief of the southern carriers will be divided into four parts:

Part One: The District Court erred in making its own finding as to the reasonableness of the equalizing rates of the northern carriers.

Part Two: The District Court erred in setting aside the Commission's finding that the equalizing rates of the northern carriers would cause undue preference and prejudice.

Part Three: The District Court erred in completely ignoring the unqualified finding by the Commission that "approval of [the northern carriers'] proposed rates would require alternate approval of [the southern carriers'] pro-

posed rates," and should, therefore, be disallowed in the interest "of preventing destructive competition and promoting the financial stability of the regulated carriers."

Part Four: Rates at Boston lower than at New York cannot be supported on any basis.

We proceed to the argument under these four principal headings.

PART ONE

THE DISTRICT COURT ERRED IN MAKING ITS OWN FINDING OF THE REASONABLENESS OF THE EQUALIZING RATES OF THE NORTHERN CARRIERS.

Since the Commission found the equalizing rates proposed by the northern carriers to be unduly preferential and prejudicial in violation of section 3, it was unnecessary for that agency to pass upon their reasonableness under section 1. Nevertheless, in commenting upon their level, the Commission found (R. 3797):

> After restatement of the protestants' cost to reflect port costs computed on that basis, and giving effect to adjustments in other disputed but less important items of those costs, application of the resulting costs to the New York traffic indicates that the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs. However, a presentation of costs adequate to determine whether the proposed rates would be reasonably compensatory should embrace all types of traffic which those rates are expected to attract, and should reflect the cost of the specific methods by which they would be handled. It may be that other traffic would be forced to absorb a larger portion of the constant costs in order to maintain a national transportation system conforming to the ultimate objectives of the national transportation policy.

When, at a later time, the District Court overruled the Commission's finding on the issue of undue preference and prejudice, it was immediately important to determine whether the equalizing rates were reasonable. In fact, the issue became inescapable. To have it resolved, the District Court did not remand. After pointing out that "it [the Commission] refused to find the rates compensatory," the District Court, preempting the administrative function, made its own evaluation of the evidence and its own finding of reasonableness and, in effect, undertook to fix rates, which it had no power to do.

This exercise by the District Court of an administrative function is in itself grounds for reversal. The fact that the District Court's performance in this area was anything but expert makes such disposition mandatory.

For in finding that the equalizing rates of the northern carriers would be reasonable, upon what evidence does the District Court rely?

The District Court first repeats the argument of the northern carriers that the proposed reductions are for "minimal amounts" (R. 4000). But this is no proof that the resulting rates would be compensatory. There is no cost evidence in the record that even the present rates to and from the northern tier ports (before the proposed reductions) are compensatory. In fact, there is overwhelming evidence to the contrary.

The District Court then repeats the argument of the northern carriers that average revenues per ton and per ton-mile under the equalizing rates would exceed the averages for freight traffic in the United States (R. 4001). But this fact is not connected up with the services to be performed under these rates and therefore has no meaning. Distances between the northern tier ports and differential

territory are much longer than those for average traffic in the United States, and accordingly, the revenues should be greater (R. 1247-1251). Moreover, traffic to and from the port of New York incurs extraordinary terminal expenses that bear no relation to average figures for the United States (See p. 35, *infra*).

The District Court points, finally, to the conclusion of the Commission that, as to part of the traffic, "the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs" (R. 4001). But this is not a finding that the proposed rates would be compensatory. On the contrary, to be compensatory, rates must produce "a contribution to the transportation burden * * * recognizable contribution to the constant costs." *Feed, Hebron, N. Dak., to Twin Cities*, 314 I.C.C. 181, 184 (1961). Here, there is no evidence of such contribution, and the Commission added (R. 3797):

> a presentation of costs adequate to determine whether the proposed rates would be reasonably compensatory should embrace all types of traffic which those rates are expected to attract, and should reflect the costs of the specific methods by which they would be handled. It may be that other traffic would be forced to absorb a larger portion of the constant costs in order to maintain a national transportation system conforming to the ultimate objectives of the national transportation policy.

Thus, for its finding of reasonableness the District Court has no evidentiary support. There is in fact direct evidence to the contrary.

Further proof of the non-compensatory character of the equalizing rates proposed by the northern carriers — proof that the District Court completely overlooks — is found in the point blank refusal of these carriers to furnish any

cost figures of their own at the hearings before the Commission. They strongly resisted a suggestion that the cost section of the Commission be invited to help in the development of relevant cost data (R. 52-58). Even in their attempts to discredit as unrepresentative the cost computations of the southern carriers, the northern carriers were always careful to avoid their own showing (R. 1325, 1327, 1329, 1330, 1342, 1377, 1381). Requests for actual figures bearing on their services were characterized by counsel for the northern carriers as "almost outrageous," and when reminded by the Examiner that he was "perfectly free to refuse to produce" information, he acknowledged that "I have had to do that throughout this whole proceeding" (R. 1350).

Special signficance should be attached to this attitude on the part of the northern carriers. The New York Central Railroad as the principal such carrier is certainly no stranger to studies of operating costs in New York Harbor and has made many such inquiries on its own. In fact, inquiries were under way at the same time as the hearings in this case before the Commission (R. 98, 99, 1310, 1311, 1361-1363). The results of one were announced by the President of the New York Central before the record in this case was closed, as follows (R. 3624):

> The freight services provided by the Central to industry within the City of New York include the only direct service by rail, as well as a lighterage service which enhances New York harbor. (Incidentally, as you know, both of these operate at substantial losses; in 1957 the loss on our freight service to Manhattan Island was $10,350,000.)

When confronted with this admission, counsel for northern carriers sought to attribute this enormous loss to domestic freight at New York. If this is so, contrary to

the plain words of the statement, the loss arising from the handling at New York of export-import freight is much greater. The local superintendent of the New York Central gave several reasons why this is so: As distinguished from domestic freight at New York, export-import traffic receives special handling because of the requirements of the steamship operators, including special deliveries to steamers at their convenience, split deliveries, holding in yards, extra switching, more free time, free transfer between car and lighter (as distinguished from carfloat service principally used in domestic service), double handling in some cases from car to pier to lighter, special clearances with Customs, etc. As stated by the same witness "none of these difficulties are encountered in the handling of domestic traffic" (R. 3581-3597).

The result is plain.

In setting aside the Commission's refusal to find the proposed rates to be compensatory and in making its own finding in this connection, the District Court falls into serious error. Not only did the District Court err in exercising a clear administrative function but in doing so, it exhibits a total lack of understanding of the record before the Commission. Proof that has no bearing upon the compensatory nature of the proposed equalizing rates of the northern carriers is regarded as controlling by the District Court. At the same time, the District Court completely ignores clear evidence of the non-compensatory character of these rates, including an admission on this point by the New York Central as the principal northern carrier.

PART TWO

THE DISTRICT COURT ERRED IN SETTING ASIDE THE COMMISSION'S FINDING THAT THE EQUALIZING RATES OF THE NORTHERN CARRIERS WOULD CAUSE UNDUE PREFERENCE AND PREJUDICE.

In now turning to the District Court's reversal of the Commission's finding of undue preference and prejudice, it should first be observed that the District Court does not correctly state the grounds for the Commission's finding.

At two points in its opinion the District Court refers to the distance disadvantage of the northern tier ports as the only ground for the Commission's conclusion of a section 3(1) violation. It refers to this disadvantage as (R. 3998):

> the sole subsidiary finding upon which this conclusion [of the Commission] is based — that the northern tier ports have a distance disadvantage over Baltimore of from 223 miles in the case of Boston to 117 miles in the case of New York.

And later in its opinion the District Court repeats (R. 4003):

> The Commission in reaching the conclusion that the proposed rates violate section 3(1) relies on a single subsidiary finding — the distance disadvantage of the Northern tier ports.

The District Court is plainly wrong.

While distance is a definite factor in the Commission's decision, the Commission was careful to point out that this was so "under the circumstances here revealed" (circumstances not revealed, incidentally, in the opinion of the District Court) (R. 3854). But more than this, an equally important factor in the Commission's decision has nothing to do with distance. It concerns the "undue diversion" of traffic to the port of New York that an equalization

of rates, according to the Commission, would produce. The Commission in its first opinion found (R. 3806):

> The evidence upon which the respondents rely is not convincing that their proposed rates are necessary to afford them and the northern tier ports, as a group, the opportunity to compete for a larger proportionate share of the traffic here considered. On the contrary, the record is clear that New York continues to attract more of the highly desirable general-cargo tonnage so vital to its port economy than all of the other North Atlantic ports combined; that to obtain a volume of traffic which will support a much lower level of port activity and range of shipping services than New York, the southern tier ports have been depending heavily on bulk-cargo tonnage; and that, considering the volume and character of the traffic disclosed by the traffic study, and other evidence of circumstances which induce or deter the flow of the subject traffic, *undue diversion from those ports to New York, at least of most types of that traffic, would result from the proposed equalization.* The comprehensive showing in that study strongly refutes the claim of the respondents and their supporting port interests that such equalization is required to enable them to meet the competition of the southern tier ports and to effect a reasonable and nonpreferential rate relationship as between the opposing port groups. (Italics supplied.)

In its decision on reconsideration, dealing with the rates to and from the individual northern tier ports — the decision which cited the distance disadvantage of the northern tier ports as an additional ground — the Commission specifically reaffirmed its "prior findings" against equalization (R. 3855).

The District Court is thus plainly wrong in describing as the "sole" or "single" ground for the Commission's decision the distance disadvantage of the northern tier ports.

(1) THE COMMISSION'S FINDING OF "UNDUE DIVERSION" WAS INEVITABLE AND FIRMLY SUPPORTED ITS CONCLUSION OF UNDUE PREFERENCE AND PREJUDICE.

To understand the significance of the Commission's finding of "undue diversion" as one ground for its ultimate conclusion that the equalizing rates of the northern carriers would unduly prefer the northern ports and unduly prejudice the southern ports, it is necessary to appreciate the traffic flow under the differential adjustment which the Commission approves.

To begin with, it is generally agreed that the differentials may properly be tested by the performance under them. As set forth in the Commission's report (R. 3752, 3804):

> The respondents [northern carriers] accept the view expressed by the Thurman commission in 1882 * * * that the most satisfactory test of these differentials is the result of their operation.
>
> * * * * * * *
>
> To the extent that these differentials are effective in controlling the movement of traffic through particular ports, their impact is registered in the tangible evidence of the tonnage data.

To make the point specific, the northern carriers urged before the Commission that "the crucial test for Commission consideration is the proven traffic diversion, which continues today" under the differentials, while the southern carriers, supported by the southern port interests, argued that such diversion could not be shown and, moreover, the elimination of the differentials, representing the one competitive advantage of the Southern interests, would result in the gradual drying up of the southern tier ports in favor of the port of New York. In the decision of the Commission the argument of the northern carriers was

rejected as not proven and the argument of the southern carriers was generally upheld. In later upsetting the Commission's decision, the District Court merely accepted the position of the northern carriers and did not really deal with the question of "undue diversion" from the southern ports.

What, then, are the relevant data?

The record is filled with figures showing total exports and imports at the several ports. New York has been gaining less rapidly than the rest of the country but, according to the Commission, its loss of relative position has been attributable to (R. 3759, 3760):

> 1) "the exceptionally heavy exports of coal through Hampton Roads and the large increases in imports of petroleum and ores, in absolute volume and percentagewise, through Philadelphia and Baltimore" — commodities which, as also found by the Commission, "do not move to or from the affected territory or the rates thereon are not in issue in this proceeding;" and
>
> 2) "the rapid growth since World War II of trade through the South Atlantic, Gulf, and Pacific ports, due in large measure to the expanding population and industrial development in the areas tributary to those ports."

But even after these larger percentage gains elsewhere, New York remains the self-advertised and acknowledged "World's Greatest Port" (R. 2513-2534). Tables of 1955 figures included in the Commission's report are described by that body as showing (R. 3760):

> that New York handled more tonnage of all commodities than any of the southern tier ports; excluding petroleum, coal, and iron ore, it handled nearly as

> much as those ports combined; and it handled about 60 percent more general cargo exports and imports than those ports combined.

But overall port figures have "nothing to do with the issue in this case," and this is admitted on behalf of the northern interests (R. 72, 245, 253, 258). To establish trends, the only meaningful data would be rail tonnages moving between differential territory and the North Atlantic ports, over a period of time, but as found by the Commission (R. 3762):

> The record contains no complete comparative data from which the trend of the subject traffic, and the effect of ocean-rate equalization upon it, to and from New York and the other northern tier ports, can be determined.

Certain figures confined to four railroads serving New York were produced in this connection, but were dismissed by the Commission as "incomplete or not on comparable basis" and two of the three years studied "do not seem atypical with respect to the kind of traffic here considered" (R. 3763, 3842).

In point of fact, the Commission found that "the only complete tonnage data of record for the subject traffic" and "the best evidence which the record affords of the combined relative impact of the present differentials and other circumstances upon the movement of the subject traffic through the several ports" were the actual traffic studies which were conducted by both the northern and southern carriers during a 12-month test period ended July 31, 1956. Appendix F to the Commission's original report summarizes the aggregates (R. 3820). So far as New York and the southern tier ports are concerned, the tonnage breakdown by individual commodities is set forth in Appendix B to this brief.

In its report the Commission comments on the division of import traffic shown by this "complete" traffic study as follows (R. 3766):

> Thus, the only import tonnage which moved in substantial volume as to which the northern tier ports failed to obtain a proportionate share was that of ores and concentrates, exclusive of iron ore.

As to the division of export traffic (R. 3767):

> Thus, of the three groups supplying the principal volume of exports, only in the agricultural products group, of which about 88 percent was corn and wheat, were the southern tier ports able to show a greater share of the tonnage than the northern tier ports.

And in summary (R. 3767-3768):

> Thus, the evidence demonstrates the ability of those [northern] ports as a group to attract the preponderance of the tonnage, except as to export grain and import ores and concentrates, the movement of which appears to be largely attracted to the southern tier ports * * *.
>
> Both as to the total exports from affected territory and the total imports handled to that territory, New York's volume was more than double that of Hampton Roads, and about three times that of Philadelphia. Baltimore's tonnage surpassed New York only because of its large volume of export grain and of import bulk ores, other than iron ore.

There thus emerges the traffic pattern that has grown up under the differential adjustment — the adjustment which the Commission would retain and the District Court would upset in favor of equalization.

On the one side, the northern tier ports, dominated by New York, have maintained an enormous lead in the handling of general cargo, both imports and exports. As found by the Commission (R. 3767, 3768):

> The complete dominance by New York of the North Atlantic general-cargo traffic to and from the affected territory is clear. Of imports, its volume exceeded that of all the other ports combined, was more than double that of Baltimore, and almost four times that of Hampton Roads. As to general-cargo exports, New York's volume was 62.7 percent of the total volume for all of the ports and over 50 percent greater than that of the southern tier ports combined. Also, it was more than double the Baltimore volume and more than 10 times that of Hampton Roads.

On the other side, the southern tier ports have developed bulk commodities and, so far as traffic to and from differential territory is concerned, taken a position of dominance there. As pointed out in the Commission's report (R. 3768, 3769, 3770, 3771):

> While, as stated, New York's general-cargo tonnage far exceeds that of Baltimore, the protestant railroads have improved Baltimore's position as a port by attracting bulk commodities, chiefly grain and bulk ores, for which they have provided specialized loading or unloading facilities.
>
> * * * * * *
>
> Baltimore has also made special efforts to attract low-grade bulk imports such as chrome and manganese ore, which move both in full-cargo lots and in large parcel lots of from 2,000 to 5,000 tons. Three railroads have built special ore-handling piers with high capacity, efficient unloading facilities, permitting fast discharge of vessels and dispatch of the ore to the consignee.
>
> * * * * * *
>
> * * * it is apparent that * * * the southern tier ports have stressed specialized and bulk-cargo facilities while New York and Boston have emphasized general-cargo facilities.

We come now to the finding by the Commission that an elimination of the differential adjustment would cause "undue diversion" from southern to northern ports.

The conclusion that the Commission arrived at is inescapable.

For that relatively small part of the general cargo traffic that passes through the southern tier ports, what attraction is there except a lower rate? The advantages of New York facilities and services, including the great superiority of its direct and more frequent steamship services to all ports of the world, are already so overwhelming as to make its 3-cent higher rate level a matter of no consequence to the great majority of shippers and receivers (R. 2513-2534, 3774-3782). In the absence of differentially lower rates, how could the southern tier ports possibly retain any part of the general cargo business that presently comes their way?

Equalization would convert the already dominant port of New York — the self-advertized "World's Greatest Port" — into an absolute monopoly on general cargo.

It is important to realize in this connection that the southern tier ports, for their existence, rely much more heavily on traffic to and from differential territory — the traffic involved in this case — than do the northern tier ports, with their enormously productive hinterlands. As specifically found by the Commission (R. 3798, 3799):

> it is apparent that the southern tier ports, especially Baltimore and Hampton Roads, are much more dependent upon such [differential territory] traffic and have far less support in the hinterlands which they serve than the northern tier ports served by respondents.

Essentially the same diversion would follow an equalization of rates on bulk traffic. As set forth in the Commission's report (R. 3799):

> The principal, and in some instances the only, reason given * * * by the shippers and receivers in the affected territory who testified in support of equalization, for routing traffic through the southern tier ports rather than the port of New York is the lower freight rates which the differentials provide.

Remove the differential, and what would be left to the Southern ports?

As to general cargo there would obviously be nothing, and it would quickly go to New York. Bulk cargo would follow. As pointed out in the Commission's report (R. 3800, 3801):

> With further concentration of such [general] cargo resulting from rate parity, the steamship lines desiring diversified cargoes would use their influence to attract more bulk cargo to provide balanced ladings at that port, with resulting diversion of bulk cargo on which Baltimore is heavily dependent.

There would be nothing to retain to the southern ports the bulk commodities which "because of their low value, are peculiarly sensitive to transportation cost, * * * the differential has greater influence on their movement than on general cargo" (R. 3800). Even the northern carriers and port interests acknowledge:

> There is no question but that the proposed rate equalization will at least be partially effective in achieving its objectives * * * the evidence in this case shows that the equalization of rail rates will undoubtedly stimulate the movement of traffic via the New York railroads.[2]

[2] Brief on behalf of New York Port Authority before the Commission dated August 7, 1961, at 80, 82.

The northern carriers' reason for arguing that equal rates would be only "partially effective" in diverting bulk traffic to New York is that they would have to contend "with the admittedly superior facilities for handling bulk commodities at the ports south of New York * * *." But here the New York carriers overlook an important point. Philadelphia, Baltimore, and Hampton Roads are essentially private ports in the sense that private capital has provided the facilities, including the special ones employed in the movement of bulk traffic. New York, on the other hand, is a public port where two public agencies (The City of New York and the New York Port Authority) are in competition with each other in pouring millions of dollars of public funds into the providing of modern port facilities. A table comparing expenditures during the period 1946-1955 appears in the Commission's report (R. 3771). With equal rates on bulk commodities New York would provide the necessary special facilities overnight — at *public* expense. It is already on record in this respect. See *Iron Ore from Eastern Ports to Central Freight Association Points*, 314 I.C.C. 149 (1961), at 161.

The Commission's finding of "undue diversion" is thus adequately supported. The District Court's action in avoiding it is not.

The District Court does not hold that "undue diversion" is an invalid ground for a Commission order of the kind here under review. Nor does it say that "undue diversion" from the southern to the northern ports would not take place under equalization. Indeed, such diversion would be consistent with the District Court's finding that "There was * * * extensive evidence from shippers, both private and representatives of various agencies of the

[1] *Id.* at p. 81.

United States, that the differential adjustment is a controlling consideration in their choice of ports" (R. 4000).

The District Court's approach is quite different. It holds simply that "the primary issue is whether equalization is necessary to enable the plaintiff [northern] railroads to compete" and in reaching an affirmative answer, the District Court says (R. 4005):

> And the evidence showed that the share of traffic handled by these [northern] railroads has been declining.

And it also says (R. 4000):

> Moreover, New York's dominance in general cargo traffic is not sufficient reason for denying it and the railroads serving it the opportunity to compete for bulk cargo traffic, as "both types of cargo are considered essential to a healthy port economy."

We reserve for treatment in Part Three of this brief the District Court's statement that "the primary issue is whether equalization is necessary to enable the plaintiff railroads to compete" (R. 4005) and address ourselves now to the two findings which appear to be at odds, at least indirectly, with the Commission's conclusion of "undue diversion."

In finding that "the evidence showed that the share of traffic handled by these northern railroads has been declining" the District Court does not specify the evidence it has in mind or say why its conclusion is different from the Commission's. It cites *overall* port figures "as an indication of the trend" against import-export traffic through the northern tier ports but side-steps the reasons, enumerated in the Commission's decision, why this trend can in no way be attributed to the differential rates here under review (R. 3999). It says that "incomplete studies for the years 1946 and 1947 tentatively indicate that a downward

trend of import-export traffic to affected territory on the lines serving New York exists," but fails to mention that these figures were rejected by the Commission not only because "incomplete" but also because they were "not on comparable bases" and include years that "do not seem atypical with respect to the kind of traffic here considered" (R. 3763, 3842).

The superficial character of the District Court's opinion is further shown by its reference to the 1955-56 traffic studies as indicating "75.8 percent of imports and 63.7 percent of exports (measured by carloads) moved through the southern tier ports" (R. 3999). Without the kind of breakdown that is contained in the Commission's report, these proportions can only mislead. Although at the heart of the Commission's finding of "undue diversion," the District Court does not mention the painstaking analysis of this subject in the Commission's report. See pp. 22-27, *supra*. The District Court does not substitute an analysis of its own.

The District Court refers to witnesses who, supporting equalization, "testified to the need to provide relief from congested ports, bunching and inefficient utilization of cars and delays in the flow of traffic" (R. 4000). The District Court would infer, at least, that such conditions existed at southern ports. But the record contains not one word of evidence as to the existence, past or present, of any such conditions. The District Court ignores the Commission's finding that "There is no evidence that such situations have obtained or are now present at the southern tier ports" (R. 3800).

The second point made in the District Court's opinion to the effect that despite "New York's dominance in general cargo traffic" it should not be denied "The opportunity to compete for bulk cargo traffic" is equally specious (R. 4000).

In justifying New York's right to such an opportunity, the District Court quotes language of the Commission that "both types of cargo are considered essential to a healthy port economy" (R. 4000). If this is so, what happens to the "port economy" of the southern tier ports when their small share of general cargo is transferred to New York? Even now, the southern ports fall far short of a "healthy port economy" because of their small general cargo tonnages. Moreover, with equalization, the bulk cargoes would go to New York too. In thus according a "healthy port economy" to New York, the District Court would deprive the southern tier ports of any "economy" at all.

(2) THE DISTRICT COURT'S FLAT REJECTION OF DISTANCE AS A VALID CONSIDERATION IN DETERMINING WHETHER PREFERENCE OR PREJUDICE IS UNDUE IS PLAINLY ERRONEOUS.

The District Court's reference to greater distances to and from the northern ports as the "sole" or "single" justification for the Commission's rejection of equalized rates, as previously pointed out in this brief, is incorrect. (See p. *supra*). Nevertheless, greater distances were a factor in the Commission's upholding of higher rates to and from the individual Northern ports. The District Court's confusion that distance should play no part in deciding this controversy is not defensible.

The District Court nevertheless tries to defend it. The Court first says that in the original establishment of the differential "No consideration whatever was given to disparity in rail distances then or later" (R. 4003). This is not accurate. Direct evidence to the contrary is cited at pp. 76, 77, 79, and 81 of Appendix A accompanying the brief concurrently being filed in this proceeding by the Maryland Port Authority, et al.

The District Court then says that "the Commission, itself, has continually adhered to the proposition that distance plays no part in the determination of port differentials," and "The finding in this case, if pressed to its logical conclusion, would result in traffic flowing only through the most distance favored port. On the other hand, if applied only in this case, the decision is arbitrary and capricious" (R. 4003, 4004). Here again, the District Court is not accurate.

To say that "the Commission, itself, has continually adhered to the proposition that distance plays no part in the determination of port differentials" is the same as saying that the Commission, in reviewing these rates, has never employed the transportation standard and should not do so now. One look at the Commission's decisions collected in Appendix A to the brief of the Maryland Port Authority, et al., filed in this proceeding will show how wrong this is. Distance is an integral part of the transportation standard, particularly when, as here, it reflects great differences in cost of service, and cannot be cast aside. *New York v. United States*, 331 U.S. 284 (1947), at 305. True, distance is not always controlling and under certain circumstances, particularly if there is agreement, can be ignored. But to hold that in a relationship controversy of the kind here presented distance plays no part is to hold that the transportation standard is irrelevant and beside the point.

The District Court's attempt to justify the exclusion of distance by citing "the 1935 amendment to section 3" as permitting "all ports and the carriers serving them to compete for all import and export traffic and thereby maximizing the number of ports available" is futile (R. 4004). The purpose of this amendment was to overcome the decision of this Court in *Texas & Pac. Ry. Co. v. United States*, 289

U.S. 627 (1933), which had disqualified ports as proper party complainants under section 3(1) of the Interstate Commerce Commission Act. To hold, as the District Court does, that this amendment requires an equalization of the rates to and from all competing ports is directly at odds with its legislative history as outlined in the brief being filed by the Commission in this case. Indeed, while this amendment was before the Senate, Senator Long of Louisiana offered an amendment which provided:

> Where rates and charges of common carriers to ports are made as reductions to equalize rates to ports served by competing carriers, it shall not be termed undue preference or discrimination.

The Senate rejected this amendment by a vote of 49 - 23 (79 Cong. Rec. 10619). Certainly the District Court cannot construe the 1935 amendment as requiring a result that the Congress specifically rejected.

The final point made by the District Court against the use of distance is found in the following passage from its opinion (R. 4004):

> Distance differences might be relevant insofar as they reflect differences in the cost and value of the services of plaintiff and defendant railroads, see United States v. Illinois Cent. R.R., 263 U.S. 515, 524 (1924), but the Commission made no such cost or value findings nor does the record contain evidence from which it would make such findings. We must, therefore, rule that its conclusion lacks the required basic findings to support it.

The District Court overlooks the record before the Commission and the Commission's decision.

As to railroad costs the record is full of it. There is more evidence on the subject of costs than on any other subject

— despite the refusal of the northern carriers (with the exception of the New Haven) to furnish any of their own figures. While most of this cost evidence is concerned with the non-compensatory character of the proposed equalizing rates to and from New York, certain studies indicate relative railroad costs on a comparable basis to and from New York, Boston, Philadelphia and Baltimore (R. 2391-2412). Costs to and from Hampton Roads are also set forth (R. 2983-3058).

On the basis of 57 representative import movements to different stations scattered throughout differential territory and 51 export movements from different stations in the same territory, the average ratios of costs to revenues, shown separately in the cited testimony, may be computed as follows:

57 import movements

Rail from:	*Ratio of Costs to Revenues*
Boston	93.9
New York	120.1
Philadelphia	82.3
Baltimore	75.3

51 export movements

Rail to:	*Ratio of Costs to Revenues*
Boston	98.9
New York	124.2
Philadelphia	8[illegible]3
Baltimore	79.0

There was no effort on the part of the northern carriers to restate the comparative costs shown in this study, and they had no quarrel with the method used (R. 1282, 1359).

Although the longer distances to and from the northern tier ports contribute to the higher cost ratios set forth above, the greater terminal costs, particularly at the port

of New York are a more important factor. In the decision of the Commission there is set forth its "analysis of the cost data of record * * * [which] show the relations between the terminal costs of the ports" in the following form (R. 3798):

Port costs, export-import (boxcars—general cargo)

Items	New York	Boston	Baltimore	Philadelphia
Costs per car:				
Switching (including some station expenses)	$28.05	$26.03	$20.19	$22.37
Float, bridge, car float, lighterage bureau	9.31			
Car detention		12.24		
Total cost per car	37.36	38.27	20.19	22.37
Costs per ton:				
Platform handling (including some station expenses)	4.58	3.22	2.76	3.58
Lighterage and trucking in lieu of lighterage	4.99		.35	
Total cost per ton	9.57	3.22	3.11	3.58

On the basis of the same loading used by the northern carriers in computing the New Haven's terminal costs at Boston the differences per car at the several ports in railroad terminal costs, as computable from the figures appearing in the foregoing table, are (R. 3364):

	Terminal Cost Box cars—27.7-ton loading
Boston	$127.46
New York	302.45
Philadelphia	121.54
Baltimore	306.34

The record also contains an elaborate study of the cost of handling import-export traffic through Hampton Roads (R. 2983-3058). These costs are only a fraction of comparable costs to and from the port of New York. Taking typical shipping and receiving stations in that part of differential territory where Hampton Roads has the same rates as Baltimore (in Illinois, Indiana, Michigan, and parts of Ohio, Missouri, Kentucky, and Wisconsin), it appears

that costs of rail transportation to and from Hampton Roads bear the following relationships to New York costs (R. 3023, 3024):

	With N.Y. costs at 100% Hampton Roads cost are:
Box Car	58.4%
Open Top Car	34.0%
Flat Car	40.3%

This means that on import-export freight moving to and from Hampton Roads the differential rates are fully compensatory. A study of 22 specific commodities, ranging from electric instruments in box cars to steel ingots in open top equipment, moving to and from 15 individual stations in differential territory indicates that such costs are, on the average, 49.7 percent of revenues. The highest relationship is 78.8 percent in the case of cotton linters to Grand Rapids, Michigan (R. 3024).

On these cost disparities the findings of the Commission are clear and unqualified. In its report it said (R. 3805, 3806):

> The greater distance of the northern tier ports from the affected territory, and the higher costs of service to and from those ports, are firmly established.

In the Commission's report on reconsideration it described the "geographical, transportation and cost advantages" of the southern carriers as "fully substantiated of record" (R. 3854).

How, in the light of this record and the unequivocal findings of the Commission, the District Court could find that the Commission made no cost findings and that the record contains no "evidence from which it could make such findings" is impossible to understand (R. 4004).

PART THREE

SINCE THE COMMISSION, IF IT UPHELD THE EQUALIZING RATES OF THE NORTHERN CARRIERS, WOULD NECESSARILY HAVE TO APPROVE THE DIFFERENTIAL-RESTORING RATES OF THE SOUTHERN CARRIERS, THE REJECTION OF THE EQUALIZING RATES IN THE INTEREST OF AVOIDING A "NEEDLESS DISSIPATION OF CARRIER REVENUES" AND "PROMOTING THE FINANCIAL STABILITY OF THE REGULATED CARRIERS" WAS INEVITABLE.

There is a further and separate ground for the Commission's decision that the District Court does not even mention. It is this: Since the southern carriers could not be denied the right to establish their differential-restoring rates if the equalizing rates of the northern carriers were approved, the Commission, in the interest of avoiding "a needless dissipation of carrier revenues," "preventing destructive competition and promoting the financial stability of the regulated carriers," disallowed the equalizing rates in the first instance. The Commission's precise finding on this point follows (R. 3805, 3806):

> The present differentials are smaller than they would be if allowed to be set by competitive factors, and also much smaller, relatively, than when initially established. As hereinbefore mentioned, protestant railroads have filed a counter proposal, in the event that the respondents' rates are found lawful; they propose to reduce their rates between southern tier ports and the same interior territory by the same amounts as proposed by the respondents. The greater distance of the northern tier ports from the affected territory, and the higher costs of service to and from those ports, are firmly established. Thus, approval of respondents' proposed rates would require alternate approval of protestants' proposed rates. This might result in the rates gravitating to their lowest possible level and in a needless dissipation of carrier revenues.

> We have been given the power to fix rates, among other reasons, for the purpose of preventing destructive competition and promoting the financial stability of the regulated carriers. Failure to observe our obligations in the exercise of that power would find us remiss in our duties. The present differentials have long served to retain a reasonable competitive relationship between the principal port groups and should be maintained.

And in its ultimate finding the Commission, aside from referring to the undue preference and prejudice that the equalizing rates would cause, concluded that these rates "are not shown to be reasonably related to the present rates on like traffic between the same interior points and the southern tier ports" (R. 3806, 3807):

The Commission's power under section 15 of the Interstate Commerce Act to protect an approved rate relationship in this manner is not open to question. *Youngstown Sheet & Tube Co. v. United States*, 295 U.S. 476 (1935). *Cf.* Commissioner Eastman's concurring opinion in *Lake Cargo Coal*, 139 I.C.C. 367 (1928), at 395.[1] In the present case the Commission refers also to the importance of section 15a(2) which (R. 3805):

> requires us to consider the effect of rates on the movement of traffic, and the national transportation policy [which] stresses the importance of maintaining a national transportation system adequate for commerce and the national defense.

The District Court completely ignores this ground for the Commission's decision. Its approach is that "the primary issue is whether equalization is necessary to enable the plaintiff [northern] railroads to compete," and it criticizes the Commission for finding that "insofar as New York is

[1] Reversed on other grounds, *Anchor Coal Co. v. United States*, 25 F. 2d 462; dismissed as moot, *United States v. Anchor Coal Co.*, 279 U.S. 812 (1929).

concerned, equalization is not necessary to enable that port to compete" (R. 4005). It says further that the Commission's decisions are "based on a misunderstanding of the nature of the proceedings", and "give continuous indication that the Commission regarded this as a 'port' case, not a 'railroad' case" (R. 4004, 4005). The District Court emphasizes that (R. 4004):

> * * * the Commission has failed to distinguish between rates which carriers may voluntarily publish to meet competition pursuant to section 15(7) and rates which carriers on complaint under section 3(1) may be required to charge. It is now well established that carriers may, within the zone of reasonableness, adjust rates to meet competition. — (citations) — in which case the issue to be decided is whether the *proposed* rates are lawful. In a complaint proceeding the question is whether the *existing* rates are lawful and, if not, whether they should be required to be changed.

But how can the District Court limit this right to compete, however it may be defined, to the northern carriers? How about the same right to compete on the part of the southern carriers? In its decision in *Lake Cargo Coal, supra*, the Commission said, at 391:

> Of course the southern carriers are not the only ones who may assert a right to an immune managerial discretion. Their rights in this regard can not be superior to the rights of other carriers. If conceded to them, * * * then in like circumstances we must concede the same right to each and every set of carriers which may claim it.

Clearly, whatever rights the northern carriers have in this respect accrue equally to the southern carriers. The District Court cannot say, as it does that (R. 4005):

> the primary issue is whether equalization is necessary to enable the plaintiff [northern] railroads to compete.

without *also* saying that:

> the primary issue is whether differentials are necessary to enable the defendant [southern] railroads to compete.

In point of fact, the findings of the Commission were that there was much more justification for lower rates by the southern carriers than by the northern carriers. On the following points included in the Commission's reports there can be, and is, no dispute:

> The present differentials are smaller than they would be if allowed to be set by competitive factors, and also much smaller, relatively, than when initially established (R. 3805).
>
> The greater distance of the northern tier ports from the affected territory, and the higher costs of service to and from those ports, are firmly established (R. 3805, 3806).
>
> While in the instant proceeding there is strong insistance by the respondents and the ports supporting them upon rate parity, equally strong are the claims of their opponents, fully substantiated of record, as to the opponents' geographical, transportation, and cost advantages (R. 3854).

Instead of supporting the District Court, the opinion of this Court in *United States v. Chicago, M., St. P. & P. R.R.*, 294 U.S. 499 (1935), supports the decision of the Commission. There, the Milwaukee Road was allowed to reduce certain coal rates from Indiana origins and thus to restore a pre-existing relationship with rates from Illinois. The Court held that a claim of "rate war" could not be sustained when the relationship being broken up had never been adjudged to be fair and sound. Cf. *Ayrshire Collieries v. United States*, 335 U.S. 573 (1949), where this Court pointed out, at 590:

> The Commission did in this case what the Court pointed out in *United States v. Chicago, M., St. P. & P. R. Co.*,

supra, at 510, it had not done there, viz, it adjudged the fairness of the relation subsisting between Illinois and Indiana rates.

Since in the present case the differential adjustment has specifically been found to be proper, proposed disruptions, such as threatened by the equalizing rates of the northern carriers, should be stopped by the Commission in the interest of forestalling "a needless dissipation of carrier revenues." Otherwise, the differential-restoring rates of the southern carriers would become effective, and the same relationship in rates as now would continue but at a lower level. Such a consequence of the decision of the District Court cannot be defended.

PART FOUR

RATES AT BOSTON LOWER THAN AT NEW YORK CAN NOT BE SUPPORTED ON ANY BASIS.

It is to be anticipated that Boston may raise in this Court the same question which led to the Commission's decision on reconsideration (R. 3836-3857). It is this: Even if New York must be denied, Boston should have rates on the same level as the southern tier ports. This would mean, of course, lower rates at the further distant port of Boston than at the port of New York.

The Commission found that such lower rates at Boston could not be upheld. There is no possible basis for a different decision.

To begin with, and on the basis of the case made by the northern tier ports for equalized rail rates, Boston's supporting evidence is even weaker than New York's. As found by the Commission:

> * * * the claims made here by the respondents and the northern tier ports, of diminishing volume of their subject traffic since equalization of the ocean rates was effected, and that these traffic losses are attributable to the differentials, are not supported by impressive evidence. As to Boston, which argues that its port and the respondents which serve it have been handicapped since equalization of the ocean rates and seeks to restore the competitive situation which the differential adjustment was designed to create, *the evidence of supporting data is even more meager than for New York* (R. 3805). (Italics supplied.)

So far as general cargo is concerned, Boston, with equal rates, has never been able to compete with New York. Even on import-export traffic to and from New England points — where the Boston rates are lower — New York is favored. As set forth in the Commission's report (R. 3784, 3785, 3845):

> The bulk of the foreign traffic in which the New Haven participates is that moving to and from non-affected territory, principally New England. As to this segment, the great preponderance of the imports and most of the exports, aggregating about 7,000 carloads in the year ended July 31, 1956, flow through New York.

* * * * * * *

> Considering that most of the general-cargo traffic of the North Atlantic ports here concerned is attracted to New York despite its differential over the southern tier ports and over Albany, the failure of Boston, with rates the same as New York, to attract a larger volume of the traffic must be ascribed to factors other than an unfavorable rate relationship, chief of which are the superior steamship and port services which New York affords. The fact, as above shown, that much of the

> New England export-import traffic moves through New York confirms this.
>
> * * * * * *
>
> witness for the New England Industrial League testified that its manufacturers "pay the higher rail costs involved in using a port other than Boston in return for ocean time advantages".

It follows that if Boston had Baltimore rates on general cargo Boston would fare no better than Baltimore in competing for general cargo with the "World's Greatest Port" of New York.

But there is a reason why, on this record at least, lower rates at Boston than at New York cannot even be considered. Such rates would violate the long-and-short haul clause of section 4 because many routes to the further distant port of Boston operate *through* the intermediate port of New York. Other routes pass through the intermediate ports of Albany and Philadelphia, and again there would be departures from the provisions of section 4. In its report on reconsideration the Commission pointed out (R. 3852):

> Albany's rates now reflect, to some degree, its shorter distances from the differential territory than to Boston and New York. From Chicago, for example, the distance to Albany is 184 miles less than to Boston, to which it is intermediate. Boston's rates, as proposed, would be lower than the present rates to and from Albany, and also lower than the present rates to and from New York and Philadelphia. Rates lower to or from Boston than to or from the other ports just mentioned, over some routes, would be in violation of the long-and-short haul provisions of section 4 of the Interstate Commerce Act.

For Boston to have lower rates than intermediate ports requires special relief from the provisions of section 4.

No application for such relief is presented in this proceeding. A prior attempt to have higher rates at New York than at Boston were rejected by the Commission as "most likely [to] precipitate a chaotic situation as between the North Atlantic ports * * *." *State of New Jersey v. Baltimore & O. R. Co.*, 245 I.C.C. 581 (1941), at 591.

Aside from section 4, Boston has another disability that shows up particularly in the movement of bulk traffic. Its longer distances to differential territory (223 miles more than Baltimore's and 117 miles more than New York's) mean that rates on the Baltimore level would be non-compensatory.

Grain, as noted by the Commission, "affords one of the principal bulk cargo exports," and yet in the cost study submitted by the New Haven Railroad as a terminal line at Boston the following comparisons of revenues and costs appear (R. 3368):

Commodity	*Revenue*	*Out-of-Pocket Costs*	*Ratio of Out-of-Pocket Costs to Revenue*
(2)	(4)	(7)	(8)
Wheat	$880.00	$1,127.03	128.07%
Corn	880.00	1,185.03	134.66
Wheat Flour	379.50	432.06	113.85
Corn Meal	438.70	533.33	121.59
Soybean Oil Meal	725.20	862.54	118.94
Malt	360.81	515.11	142.77

There is nothing new in having Baltimore rates turn out to be non-compensatory when applied to and from Boston. In *Boston & Maine R. Co. v. United States*, 153 F. Supp. 952 (1957), a finding to this effect by the Commission involving rates on import iron ore was upheld by the U.S. District Court for the District of Massachusetts as in this case. There, the estimated out-of-pocket costs for a

movement from Boston to Youngstown, Ohio, exceeded revenues under the Baltimore rate level by 22.4 cents per ton. See *Iron Ore from Eastern Ports to C.F.A. Points*, 299 I.C.C. 195 (1956), at 208; *Boston and Maine Railroad v. United States*, *supra*, at 956.

Thus there is no possible basis for lower rates at Boston than at New York.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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January 28, 1963.

APPENDIX A

The National Transportation Policy (Preamble to 49 U.S.C. 1) and the Interstate Commerce Act, 24 Stat. 379, as amended (49 U.S.C. 1 *et seq.*), provide as follows:

NATIONAL TRANSPORTATION POLICY

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; — all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

* * * * * * *

"Sec. 1 * * * (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

* * * * * * *

"Sec. 3 (1) It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

* * * * * * *

"Sec. 4 (1). It shall be unlawful for any common carrier subject to this chapter or chapter 12 of this title to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter or chapter 12 of this title, but this shall not be construed as authorizing any common carrier within the terms of this chapter or chapter 12 of this title to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers

may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *Provided further*, That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this chapter or chapter 12 of this title and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: *And provided further*, That tariffs proposing rates subject to the provision of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice."

* * * * * * *

"Sec. 15 (1). Whenever, after full hearing, upon a complaint made as provided in section 13 of this title, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property as defined in section 1 of this title, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the

provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

* * * * * *

"Sec. 15 * * * (7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such sus-

pension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

* * * * * * * * *

"SEC. 15a. * * * (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to

the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

APPENDIX B

APPENDIX B

I&S Docket No. 6615
Exhibit No. 51, MLM-5
Witness: Mollman

EXPORT TONNAGE VIA THE PORTS OF NEW YORK, N.Y., PHILADELPHIA, PA., BALTIMORE, MD., AND HAMPTON ROADS, VA., SHOWING THE PERCENTAGE RELATIONSHIP TO THE TOTAL MOVEMENT OF EACH COMMODITY FROM DIFFERENTIAL TERRITORY, PERIOD AUGUST 1, 1955, THROUGH JULY 31, 1956.

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
5	Sorghum Grain	183	100.0	—		—		—		183	100.0
27	Straw	12	100.0	—		—		—		12	100.0
35	Cotton Linters, Nolis & Regins	17	100.0	—		—		—		17	100.0
49	Apples, Fresh, Not Frozen	40	100.0	—		—		—		40	100.0
53	Berries, Fresh, Not Frozen	17	100.0	—		—		—		17	100.0
61	Oranges and Grapefruit	41	100.0	—		—		—		41	100.0
67	Watermelons	20	100.0	—		—		—		20	100.0
73	Fruits and Berries, Fresh, Frozen	23	100.0	—		—		—		23	100.0
75	Coffee	123	100.0	—		—		—		123	100.0
77	Cabbage	30	100.0	—		—		—		30	100.0
79	Celery	517	100.0	—		—		—		517	100.0
85	Potatoes, other than sweet	18	100.0	—		—		—		18	100.0
89	Vegetables, Fresh, NOS, not Frozen	94	100.0	—		—		—		94	100.0
105	Flaxseed	63	100.0	—		—		—		63	100.0
207	Sheep and Goats, Single Deck	52	100.0	—		—		—		52	100.0
211	Swine, Single Deck	22	100.0	—		—		—		22	100.0
213	Swine, Double Deck	14	100.0	—		—		—		14	100.0
221	Margarine, NOS	67	100.0	—		—		—		67	100.0
225	Poultry, Dressed and Frozen	338	100.0	—		—		—		338	100.0
227	Eggs	16	100.0	—		—		—		16	100.0
237	Wool and Mohair, NOS	82	100.0	—		—		—		82	100.0
245	Fish and Sea Animal Oil	24	100.0	—		—		—		24	100.0
321	Barytes	20	100.0	—		—		—		20	100.0
327	Gravel and Sand, NOS	66	100.0	—		—		—		66	100.0
329	Stone and Rock; Broken, Ground and Crushed	12	100.0	—		—		—		12	100.0
343	Phosphate Rock	29	100.0	—		—		—		29	100.0
345	Sulphur	74	100.0	—		—		—		74	100.0
407	Ties, Railroad	28	100.0	—		—		—		28	100.0
409	Pulpwood	50	100.0	—		—		—		50	100.0
417	Rosin and Turpentine	26	100.0	—		—		—		26	100.0
499	Products of Forests, NOS	204	100.0	—		—		—		204	100.0
511	Cottonseed Oil	77	100.0	—		—		—		77	100.0
521	Oils Foots Sediment and Tank Bottoms	148	100.0	—		—		—		148	100.0
545	Tanning Material, NOS	380	100.0	—		—		—		380	100.0
555	Aluminum: Bar, Ingot, Pig and Slab	1,289	100.0	—		—		—		1,289	100.0
563	Lead and Zinc: Bar, Ingot and Pig	37	100.0	—		—		—		37	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
565	Lead, Zinc, NOS	245	100.0	—		—		—		245	100.0
567	Magnesium Metal and Alloy	16	100.0	—		—		—		16	100.0
573	Iron Pig	87	100.0	—		—		—		87	100.0
585	Cast Iron Pipe and Fittings	425	100.0	—		—		—		425	100.0
601	Business and Office Machines, NOS	3,282	100.0	—		—		—		3,282	100.0
643	Artificial Stone, NOS	28	100.0	—		—		—		28	100.0
683	Asbestos Articles, NOS	35	100.0	—		—		—		35	100.0
713	Floor Covering	139	100.0	—		—		—		139	100.0
725	Bags: Burlap Cotton Gunny and Jute, NOS	18	100.0	—		—		—		18	100.0
727	Cotton Cloth and Cotton Fabrics, NOS	142	100.0	—		—		—		142	100.0
733	Cloth and Fabrics, NOS	139	100.0	—		—		—		139	100.0
739	Luggage and Handbags, NOS	81	100.0	—		—		—		81	100.0
747	Wine	18	100.0	—		—		—		18	100.0
757	Molasses Residual	411	100.0	—		—		—		411	100.0
765	Food Products, NOS, Frozen	40	100.0	—		—		—		40	100.0
777	Cigarettes	7	100.0	—		—		—		7	100.0
791	Iron and Steel Borings, Turnings, etc.	329	100.0	—		—		—		329	100.0
19	Flour, Edible, NOS	20,410	99.8	—		—		47	.2	20,457	100.0
789	Scrap Iron and Steel	4,945	99.6	—		20	.4	—		4,965	100.0
553	Drugs, Medicines and Toilet Prep.	2,723	99.2	—		—		21	.8	2,744	100.0
625	Airplanes, Aircraft and Parts	427	98.4	—		—		7	1.6	434	100.0
23	Mill Products, NOS	3,096	98.1	60	1.9	—		—		3,156	100.0
569	Alloys for Steel Manufacture	1,163	98.1	—		—		23	1.9	1,186	100.0
401	Logs, Butts and Bolts	1,717	97.8	—		—		38	2.2	1,755	100.0
631	Ammunition and Explosives	34,454	97.5	326	.9	—		569	1.6	35,349	100.0
593	Agricultural Implements, Parts, NOS	1,514	96.9	—		28	1.8	21	1.3	1,563	100.0
215	Meats, Fresh, NOS	10,279	96.7	353	3.3	—		—		10,632	100.0
729	Cotton Factory Products	919	96.5	—		11	1.2	22	2.3	952	100.0
797	Waste Material, NOS	2,319	96.4	86	3.6	—		—		2,405	100.0
689	Bathroom and Lavatory Fixtures and Sinks	823	95.8	—		36	4.2	—		859	100.0
659	Printing Paper, NOS	9,284	95.4	131	1.3	—		317	3.3	9,732	100.0
621	Automobiles and Auto Trucks, NOS	120,068	94.0	437	.4	3,377	2.6	3,884	3.0	127,766	100.0
709	Laundry Equipment	2,838	93.8	—		186	6.2	— 0		3,024	100.0
515	Soybean Oil	115,440	92.99	24	.02	8,410	6.77	272	.22	124,146	100.0
591	Agricultural Implements, NOS	15,088	92.9	—		478	3.0	671	4.1	16,237	100.0
21	Cereal Food Preparations, NOS	3,010	92.8	60	1.9	173	5.3	—		3,243	100.0
655	Scrap Paper and Rags	8,934	92.7	122	1.3	564	5.8	18	.2	9,638	100.0
695	Glassware, NOS	11,575	92.5	73	.6	847	6.8	13	.1	12,508	100.0
541	Insecticides and Fungicides, NOS	3,693	92.4	101	2.5	205	5.1	—		3,999	100.0
547	Paint, Paint Material, Putty and Varnish	10,092	92.4	55	.5	671	6.1	107	1.0	10,925	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
319	Ores and Concentrates, NOS	672	92.1	—		58	7.9	—		730	100.0
517	Vegetable and Nut Oils, NOS	4,501	91.6	101	2.1	291	5.9	20	.4	4,913	100.0
673	Building Paper and Prepared Roofing Materials	720	91.6	20	2.5	46	5.9	—		786	100.0
657	Newsprint Paper	237	91.5	—		—		22	8.5	259	100.0
675	Insulating Materials, NOS	3,209	90.8	60	1.7	134	3.8	130	3.7	3,533	100.0
950	Forwarded Traffic	50,576	90.6	—		5,242	9.4	—		55,818	100.0
199	Products of Agriculture, NOS	2,598	90.5	—		212	7.4	61	2.1	2,871	100.0
613	Automobiles, Passenger	57,299	90.5	95	.2	5,582	8.8	303	.5	63,279	100.0
717	Furniture Parts	535	89.8	—		59	9.9	2	.3	596	100.0
707	Refrigerators, Freezing Apparatus and Parts	24,670	89.70	13	.05	1,057	3.84	1,763	6.41	27,503	100.0
685	Electrical Equipment and Parts, NOS	16,049	88.6	210	1.2	1,239	6.8	608	3.4	18,106	100.0
783	Containers, Fibreboard and Pulpboard, KD	2,689	87.9	57	1.9	273	8.9	40	1.3	3,059	100.0
503	Fuel Road and Petroleum Residual Oils, NOS	106	87.6	—		15	12.4	—		121	100.0
25	Hays	95	87.2	—		14	12.8	—		109	100.0
581	Iron and Steel Nails and Wire (Woven and Not Woven), NOS	11,482	86.9	191	1.4	1,264	9.6	280	2.1	13,217	100.0
519	Oils, NOS	299	86.4	—		47	13.6	—		346	100.0
549	Plastics	6,340	86.1	—		913	12.4	113	1.5	7,366	100.0
617	Vehicles, Motor, NOS	68,842	86.0	761	1.0	5,795	7.2	4,653	5.8	80,051	100.0
15	Flour Wheat	40,162	85.8	58	.1	5,794	12.4	779	1.7	46,793	100.0
779	Containers, Metal	2,834	85.8	145	4.4	183	5.5	141	4.3	3,303	100.0
705	Household Utensils, NOS	1,161	85.3	—		200	14.7	—		1,361	100.0
531	Acids, NOS	4,683	85.1	731	13.3	71	1.3	15	.3	5,500	100.0
551	Cellulose Articles, NOS	39	84.8	—		—		7	15.2	46	100.0
795	Waste Material for Remelting, NOS	1,699	84.5	—		312	15.5	—		2,011	100.0
239	Hides, Skins and Pelts, NOS	7,323	84.2	335	3.8	1,043	12.0	—		8,701	100.0
711	Stoves, Ranges and Parts	6,300	84.2	64	.9	864	11.5	258	3.4	7,486	100.0
677	Building, Woodwork and Millwork	78	83.9	—		—		15	16.1	93	100.0
751	Beverages, NOS	162	83.9	—		—		31	16.1	193	100.0
603	Railway Equipment Moved on own Wheels	945	83.2	—		179	15.8	12	1.0	1,136	100.0
507	Petroleum Products, Refined, NOS	44,231	82.1	8,005	14.9	1,243	2.3	378	.7	53,857	100.0
595	Machinery and Machines, NOS	162,400	81.9	5,904	3.0	16,931	8.5	13,182	6.6	198,417	100.0
627	Tires and Tubes, Rubber	33,086	81.5	60	.2	1,075	2.6	6,390	15.7	40,611	100.0
605	Railway Equipment, S.U., Not Moved on Own Wheels	2,897	81.0	—		681	19.0	—		3,578	100.0
589	Tanks, NOS	2,348	80.5	106	3.6	234	8.0	231	7.9	2,919	100.0
219	Packing House Products, Edible, NOS	57,030	78.9	316	.4	14,548	20.1	430	.6	72,324	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
667	Printed Matter, NOS	1,067	78.9	213	15.7	—		73	5.4	1,353	100.0
721	Abrasives, other than crude	641	78.5	43	5.3	43	5.3	89	10.9	816	100.0
557	Aluminum, NOS	401	78.3	—		111	21.7	—		512	100.0
509	Gases, other than Petroleum, NOS	370	78.1	104	21.9	—		—		474	100.0
647	Plaster: Stucco and Wall	163	78.0	—		46	22.0	—		209	100.0
749	Liquors, Malt	7,584	77.8	—		1,620	16.6	550	5.6	9,754	100.0
679	Building Materials, NOS	824	77.5	—		239	22.5	—		1,063	100.0
697	Glass Bottles, Jars and Packing Glasses, NOS	18,137	76.6	191	.8	5,276	22.3	84	.3	23,688	100.0
597	Machinery Parts	30,187	75.3	965	2.4	6,686	16.7	2,260	5.6	40,098	100.0
761	Candy and Confectionery	570	75.1	—		57	7.5	132	17.4	759	100.0
671	Wallboard	120	75.0	—		30	18.8	10	6.2	160	100.0
505	Lubricating Oils and Greases	42,145	73.6	4,799	8.4	10,063	17.6	249	.4	57,256	100.0
339	Asphalt	329	73.4	—		119	26.6	—		448	100.0
13	Grains, NOS	751	73.3	273	26.7	—		—		1,024	100.0
607	Railway Equipment Parts	16,462	73.2	189	.8	513	2.3	5,327	23.7	22,491	100.0
533	Sodium (Soda) Products	18,056	71.7	398	1.6	5,967	23.7	755	3.0	25,176	100.0
611	Vehicles, other than Motor	3,759	71.1	35	.6	146	2.8	1,349	25.5	5,289	100.0
691	Hardware, NOS	364	70.9	15	2.9	27	5.3	107	20.9	513	100.0
799	Manufactures & Miscl., NOS	28,749	70.8	1,844	4.5	5,433	13.4	4,568	11.3	40,594	100.0
693	Glass	2,779	70.6	54	1.4	670	17.0	431	11.0	3,934	100.0
701	Chinaware, Crockery & Earthenware	748	70.3	27	2.5	289	27.2	—		1,064	100.0
107	Seeds, NOS	127	70.2	—		—		54	29.8	181	100.0
787	Containers, returned empty	66	70.2	—		28	29.8	—		94	100.0
241	Leather, NOS	32	69.6	—		—		14	30.4	46	100.0
665	Paper and Paper Articles, NOS	1,081	69.1	—		359	22.9	125	8.0	1,565	100.0
623	Vehicles Parts, NOS	91,818	68.8	24,245	18.2	2,481	1.9	14,815	11.1	133,359	100.0
543	Tar, Pitch and Creosote	267	68.7	—		104	26.7	18	4.6	389	100.0
773	Feed, Animal and Poultry, NOS	47,674	67.78	2,228	3.17	20,403	29.01	31	.04	70,336	100.0
217	Meats, Cooked, Cured, Dried and Smoked	10,534	65.9	170	1.1	4,954	31.6	313	2.0	15,971	100.0
767	Starch	2,561	65.2	—		863	22.0	502	12.8	3,926	100.0
645	Lime, NOS	461	64.3	—		175	24.4	81	11.3	717	100.0
743	Games and Toys	83	64.3	—		46	35.7	—		129	100.0
341	Salt	2,277	63.8	—		878	24.6	416	11.6	3,571	100.0
561	Copper, Brass and Bronze, NOS	1,991	63.7	19	.6	—		1,114	35.7	3,124	100.0
635	Cement, NOS	1,273	63.1	36	1.8	558	27.6	152	7.5	2,019	100.0
527	Chemicals, NOS	19,722	62.1	753	2.4	10,456	32.9	836	2.6	31,767	100.0
615	Automobiles, Freight	9,497	61.9	84	.5	228	1.5	5,543	36.1	15,352	100.0
715	Furniture, NOS	3,715	61.6	85	1.4	1,208	20.0	1,026	17.0	6,034	100.0
583	Manufactured Iron and Steel	580,073	61.1	10,997	1.1	352,992	37.2	5,416	.6	949,478	100.0
785	Containers, NOS	1,642	59.4	114	4.1	635	23.0	374	13.5	2,765	100.0
535	Alcohols, NOS	487	58.5	—		—		345	41.5	832	100.0
69	Fruits, Fresh, NOS, not Frozen	47	56.6	—		—		36	43.4	83	100.0

No	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
577	Iron and Steel Bar, Rod & Slab	1,314	56.3	13	.5	966	41.4	41	1.8	2,334	100.0
523	Rubber, Crude, Natural and Synthetic	15,563	54.8	223	.8	3,546	12.5	9,054	31.9	28,388	100.0
745	Liquors, alcoholic, NOS	659	54.7	—		531	44.1	15	1.2	1,205	100.0
609	Rails and Railway Track Material, Iron and Steel	3,751	53.1	—		3,007	42.5	311	4.4	7,069	100.0
769	Soap and Cleaning and Washing Compound	1,870	52.9	105	2.9	452	12.8	1,110	31.4	3,537	100.0
741	Athletic, Gymnasium, Playground and Sporting Equipment, NOS	294	49.1	—		60	10.0	245	40.9	599	100.0
687	Furnaces, Heaters, Radiators and Parts	1,489	49.2	40	1.3	1,310	43.3	188	6.2	3,027	100.0
229	Butter	7,603	48.9	2,450	15.8	1,819	11.7	3,662	23.6	15,534	100.0
771	Matches	12	48.0	—		13	52.0	—		25	100.0
755	Syrup and Molasses, refined	775	47.0	305	18.5	375	22.7	194	11.8	1,649	100.0
763	Food Products, NOS, in cans and Packages not frozen	36,013	46.9	8,556	11.2	13,117	17.1	19,025	24.8	76,711	100.0
641	Refractories	4,105	44.6	47	.5	4,876	53.0	172	1.9	9,200	100.0
411	Lumber, Shingles and Lath	898	43.2	91	4.4	326	15.7	764	36.7	2,079	100.0
299	Animals and Products, NOS	25,982	42.7	21,534	35.4	362	.6	12,993	21.3	60,871	100.0
793	Furnace Slag	32	42.7	—		43	57.3	—		75	100.0
587	Iron and Steel Pipe and Fittings, NOS	71,754	42.3	2,989	1.8	92,130	55.0	1,590	.9	169,463	100.0
91	Beans and Peas, Dried	209	42.2	166	33.5	—		120	24.3	495	100.0
525	Rubber Goods, NOS	1,100	42.2	15	.6	1,502	57.2	—		2,623	100.0
639	Brick, NOS, and Building Tile	1,309	41.4	—		1,816	57.4	40	1.2	3,165	100.0
103	Malt, NOS	9,996	40.0	—		11,335	45.5	3,626	14.5	24,947	100.0
663	Paper Bags	104	39.4	22	8.3	97	36.8	41	15.5	264	100.0
723	Bagging, Burlap, Cotton, Gunny and Jute, NOS	32	39.0	—		—		50	61.0	82	100.0
325	Sand, Industrial	378	38.8	—		595	61.2	—		973	100.0
681	Buildings and Houses, Fabricated and Portable, NOS	932	37.8	81	3.3	25	1.0	1,429	57.9	2,467	100.0
45	Soybean Oil Cake and Meal	12,000	35.9	—		16,576	49.5	4,888	14.6	33,470	100.0
311	Aluminum Ore and Concentrates	56	35.0	—		—		104	65.0	160	100.0
633	Cement: Natural and Portland	473	33.4	95	6.7	834	58.8	16	1.1	1,418	100.0
719	Tools and Parts, NOS	598	33.0	20	1.1	1,052	58.1	141	7.8	1,811	100.0
759	Sugar	468	32.5	110	7.6	632	43.9	230	16.0	1,440	100.0
703	Woodenware	51	31.9	—		41	25.6	68	42.5	160	100.0
513	Linseed Oil	59	29.8	—		139	70.2	—		198	100.0
619	Military Vehicles, NOS	1,113	29.4	6	.2	—		2,665	70.4	3,784	100.0
737	Boots, Shoes and Findings, NOS	58	28.3	—		—		147	71.7	205	100.0
669	Paperboard, Fibreboard and Pulpboard	2,017	27.3	27	.4	5,227	70.7	123	1.6	7,394	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
661	Wrapping Paper	593	27.0	—		1,500	68.3	103	4.7	2,196	100
413	Box Crate and Cooperage Materials	380	22.1	—		685	39.8	656	38.1	1,721	100
781	Containers, Wooden	293	21.8	—		1,048	78.2	—		1,341	100
403	Posts, Poles and Pilings, Wooden	7	20.6	—		—		27	79.4	34	100
29	Tobacco, Unmanufactured	1,189	20.4	—		41	.7	4,601	78.9	5,831	100
629	Guns, Small Arms and Parts, NOS	608	20.0	15	.5	—		2,414	79.5	3,037	100
17	Meal Corn	2,074	19.5	8,587	80.5	—		—		10,661	100
571	Metals and Alloys, NOS	258	18.6	72	5.2	168	12.1	890	64.1	1,388	100
231	Cheese	4,232	18.3	5,370	23.3	3,970	17.2	9,513	41.2	23,085	100
579	Iron and Steel, NOS	138	18.1	—		625	81.9	—		763	100
399	Products of Mines, NOS	308	17.7	—		1,404	80.4	33	1.9	1,745	100
575	Iron and Steel: Billet, Bloom and Ingot	11,951	16.4	568	.8	44,180	60.6	16,193	22.2	72,892	100
735	Rope Cordage and Binder Twine, NOS	34	16.1	—		—		177	83.9	211	100
7	Oats	11,571	9.8	21,081	17.8	85,487	72.4	—		118,139	100
233	Dairy Products, NOS	367	9.8	241	6.5	1,156	31.0	1,966	52.7	3,730	100
47	Vegetable and Nut Oil Cake and Meal, NOS	89	5.0	—		1,685	95.0	—		1,774	100
1	Wheat	117,786	5.3	488,310	21.9	800,237	36.0	819,609	36.8	2,225,942	100
3	Corn	66,393	4.4	211,548	13.9	1,243,846	81.7	—		1,521,787	100
9	Barley and Rye	7,310	3.8	10,141	5.2	176,774	91.0	—		194,225	100
653	Woodpulp	7	3.7	—		438	96.3	—		455	100
307	Coke	257	3.1	—		8,024	96.9	—		8,281	100
649	Sewer Pipe and Drain Tile (Not Metal)	65	2.8	—		2,268	97.2	—		2,333	100
323	Clay and Bentonite	104	1.4	—		705	9.2	6,877	89.4	7,686	100
539	Fertilizers, NOS	1,513	.7	815	.4	218,151	98.9	—		220,479	100
43	Soybeans	—		4,225	5.5	32,965	42.9	39,582	51.6	76,772	100
203	Cattle and Calves, Single Deck	—		—		12	100.0	—		12	100
415	Veneer Plywood and Built-Up Wood	—		—		18	100.0	—		18	100
559	Copper, Ingot, Matte and Pig	—		—		—		35	100.0	35	100
651	Broken or Ground Brick Block, Crockery and Glass	—		—		—		182	100.0	182	100
731	Synthetic Fibre and Yarns (Rayon or Nylon)	—		—		—		18	100.0	18	100

RECAPITULATION

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
Group 1 —	*Products of Agriculture* (1-199)	300,107	7.0	744,509	17.3	2,375,139	55.3	873,403	20.4	4,293,158	100.0
Group 2 —	*Animals and Products* (201-299)	123,997	58.6	30,769	14.5	27,864	13.2	28,891	13.7	211,521	100.0
Group 3 —	*Products of Mines* (301-399)—(Excluding Coal, Coke, Direct Product of Coal and Iron Ore)	4,582	19.3	—		111,783	49.5	7,430	31.2	23,795	100.0
Group 4 —	*Products of Forests* (401-499)	3,310	56.0	91	1.5	1,029	17.4	1,485	25.1	5,915	100.0
Group 5 —	*Manufactures and Miscellaneous* (501-799)	1,910,473	63.5	79,440	2.6	882,442	29.3	137,808	4.6	3,010,163	100.0
Group 6 —	*Forwarder Traffic* (950)	50,576	90.6	—		5,242	9.4	—		55,818	100.0
Total	Groups 1 to 6	2,393,045	31.5	854,809	11.2	3,303,499	43.5	1,049,017	13.8	7,600,370	100.0
	Items 1-3-5-7-9-13	203,994		735,285		2,339,309		859,970		4,138,558	
	Balance	2,189,051	63.24	119,524	3.45	964,190	27.85	189,047	5.46	3,461,812	100.0

SOURCE: Witness Mollman's Exhibit No. 3, Pages 1 to 6, and Exhibit No. 2, Pages 110 to 113, and Pages 125 to 129, inclusive, I.&S. Docket No. 6615.

IMPORT TONNAGE VIA THE PORTS OF NEW YORK, N.Y., PHILADELPHIA, PA., BALTIMORE, MD., AND HAMPTON ROADS, VA., SHOWING THE PERCENTAGE RELATIONSHIP TO THE TOTAL MOVEMENT OF EACH COMMODITY TO DIFFERENTIAL TERRITORY, PERIOD AUGUST 1, 1955, THROUGH JULY 31, 1956.

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
5	Sorghum Grain	33	100.0	—		—		—		33	100.0
15	Flour, Wheat	119	100.0	—		—		—		119	100.0
23	Mill Products, NOS	52	100.0	—		—		—		52	100.0
57	Grapes, fresh	11	100.0	—		—		—		11	100.0
65	Pears, fresh, not frozen	204	100.0	—		—		—		204	100.0
71	Fruits, dried, dehydrated and evaporated, NOS	2,735	100.0	—		—		—		2,735	100.0
73	Fruits and Berries, fresh, frozen	21	100.0	—		—		—		21	100.0
81	Lettuce	29	100.0	—		—		—		29	100.0
83	Onions, dry	149	100.0	—		—		—		149	100.0
93	Vegetables, dried, dehydrated and evaporated, NOS	79	100.0	—		—		—		79	100.0
215	Meats, fresh, NOS	79	100.0	—		—		—		79	100.0
219	Packing House Products, edible, NOS	730	100.0	—		—		—		730	100.0
231	Cheese	624	100.0	—		—		—		624	100.0
241	Leather, NOS	177	100.0	—		—		—		177	100.0
243	Sea Food, NOS	142	100.0	—		—		—		142	100.0
245	Fish and Sea Animal Oil	333	100.0	—		—		—		333	100.0
301	Iron Ore	74	100.0	—		—		—		74	100.0
327	Gravel and Sand, NOS	29	100.0	—		—		—		29	100.0
329	Stone and Rock, broken, ground and crushed	525	100.0	—		—		—		525	100.0
345	Sulphur	62	100.0	—		—		—		62	100.0
417	Rosin and Turpentine	18	100.0	—		—		—		18	100.0
505	Lubrication Oils and Greases	13	100.0	—		—		—		13	100.0
507	Petroleum Products, refined, NOS	18	100.0	—		—		—		18	100.0
511	Cottonseed Oil	46	100.0	—		—		—		46	100.0
517	Vegetable and Nut Oil, NOS	6,451	100.0	—		—		—		6,451	100.0
521	Oils Foots Sediment and Tank Bottoms	26	100.0	—		—		—		26	100.0
525	Rubber Goods, NOS	225	100.0	—		—		—		225	100.0
535	Alcohol, NOS	81	100.0	—		—		—		81	100.0
541	Insecticides and Fungicides, NOS	149	100.0	—		—		—		149	100.0
543	Tar Pitch and Creosote	135	100.0	—		—		—		135	100.0
549	Plastics	43	100.0	—		—		—		43	100.0
553	Drugs, Medicines and Toilet Prep	456	100.0	—		—		—		456	100.0
557	Aluminum, NOS	171	100.0	—		—		—		171	100.0
559	Copper, Ingot, Matte and Pig	24,084	100.0	—		—		—		24,084	100.0
579	Iron and Steel, NOS	50	100.0	—		—		—		50	100.0
585	Cast Iron Pipe and Fittings	31	100.0	—		—		—		31	100.0
591	Agricultural Implements, NOS	31	100.0	—		—		—		31	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
607	Railway Equipment Parts	71	100.0	—		—		—		71	100.0
621	Automobiles and Auto Trucks, KD	5	100.0	—		—		—		5	100.0
631	Ammunition and Explosives	39	100.0	—		—		—		39	100.0
665	Paper and Paper Articles, NOS	99	100.0	—		—		—		99	100.0
673	Building Paper and Prepared Roofing Material	36	100.0	—		—		—		36	100.0
677	Building Woodwork and Millwork	12	100.0	—		—		—		12	100.0
679	Building Material, NOS	174	100.0	—		—		—		174	100.0
697	Glass Bottles, Jars and Packing Glasses, NOS	38	100.0	—		—		—		38	100.0
705	Household Utensils, NOS	148	100.0	—		—		—		148	100.0
739	Luggage and Handbags, NOS	9	100.0	—		—		—		9	100.0
741	Athletic, Gymnasium, Playground and Sporting Equipment, NOS	44	100.0	—		—		—		44	100.0
751	Beverages, NOS	587	100.0	—		—		—		587	100.0
755	Syrup, Molasses, Refined	513	100.0	—		—		—		513	100.0
761	Candy and Confectionery	288	100.0	—		—		—		288	100.0
787	Containers, Returned Empty	49	100.0	—		—		—		49	100.0
950	Forwarder Traffic	66	100.0	—		—		—		66	100.0
75	Coffee	133,265	98.62	—		1,854	1.37	16	.01	135,135	100.0
561	Copper, Brass and Bronze, NOS	2,397	97.6	—		60	2.4	—		2,457	100.0
727	Cotton Cloth and Cotton Fabrics, NOS	390	95.1	—		—		20	4.9	410	100.0
797	Waste Material, NOS	11,958	91.8	644	4.9	281	2.2	147	1.1	13,030	100.0
91	Beans and Peas, dried	1,071	90.6	—		111	9.4	—		1,182	100.0
701	Chinaware, Crockery and Earthenware	820	89.2	18	2.0	81	8.8	—		919	100.0
743	Games and Toys	185	88.9	—		23	11.1	—		208	100.0
217	Meats, Cooked, Cured, Dried and Smoked	8,783	88.7	418	4.2	83	.9	614	6.2	9,898	100.0
659	Printing Paper	201	88.5	26	11.5	—		—		227	100.0
789	Scrap Iron and Steel	355	87.7	22	5.4	28	6.9	—		405	100.0
745	Liquors, Alcoholic, NOS	1,774	87.2	170	8.4	90	4.4	—		2,034	100.0
97	Peanuts	178	86.4	—		—		28	13.6	206	100.0
779	Containers, Metal	76	86.4	—		12	13.6	—		88	100.0
571	Metals and Alloys, NOS	22,122	86.1	46	.2	3,519	13.7	—		25,687	100.0
519	Oils, NOS	1,439	83.5	285	16.5	—		—		1,724	100.0
333	Stone, rough	1,171	82.6	61	4.3	186	13.1	—		1,418	100.0
107	Seeds, NOS	2,471	82.5	64	2.2	28	.9	432	14.4	2,995	100.0
239	Hides, Skins and Pelts, NOS	1,944	82.5	288	12.2	125	5.3	—		2,357	100.0
547	Paint, Paint Material, Putty and Varnish	879	81.8	—		195	18.2	—		1,074	100.0
523	Rubber, Crude, Natural and Synthetic	164,953	80.90	360	.18	38,533	18.90	35	.02	203,881	100.0
69	Fruits, fresh, NOS, not frozen	1,280	80.2	317	19.8	—		—		1,597	100.0
19	Flour, edible, NOS	1,448	79.1	69	3.8	205	11.2	108	5.9	1,830	100.0
597	Machinery Parts	628	77.9	81	10.0	44	5.5	53	6.6	806	100.0
685	Electrical Equipment and Parts, NOS	261	77.9	—		—		74	22.1	335	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
725	Bags, Burlap, Cotton, Gunny and Jute, NOS	48	76.2	15	23.8	—		—		63	100.0
325	Sand, Industrial	177	74.4	61	25.6	—		—		238	100.0
89	Vegetables, fresh, NOS, not frozen	249	72.4	—		95	27.6	—		344	100.0
627	Tires and Tubes, rubber	110	72.4	—		—		42	27.6	152	100.0
335	Stone, finished, NOS	112	71.3	45	28.7	—		—		157	100.0
199	Products of Agriculture, NOS	19,842	71.1	4,373	15.7	3,514	12.6	167	.6	27,896	100.0
563	Lead and Zinc: Bar, ingot and Pig	12,646	70.5	103	.6	5,161	28.8	20	.1	17,930	100.0
691	Hardware, NOS	292	70.2	—		97	23.3	27	6.5	416	100.0
771	Matches	56	70.0	—		24	30.0	—		80	100.0
299	Animals and Products, NOS	5,536	69.6	421	5.3	1,997	25.1	—		7,954	100.0
785	Containers, NOS	586	66.4	198	22.4	64	7.2	35	4.0	883	100.0
623	Vehicles, parts, NOS	667	65.6	—		—		350	34.4	1,017	100.0
415	Veneer, Plywood and Built-Up Wood	4,343	62.9	282	4.1	1,622	23.5	657	9.5	6,904	100.0
531	Acids, NOS	381	61.7	—		237	38.3	—		618	100.0
773	Feed, Animal and Poultry, NOS	1,566	60.3	254	9.8	521	20	254	9.8	2,595	100.0
565	Lead Zinc, NOS	231	59.1	—		—		160	40.9	391	100.0
311	Aluminum Ore and Concentrates	13,583	58.2	9,741	41.8	—		—		23,324	100.0
595	Machinery and Machines, NOS	4,506	57.3	15	.2	342	4.4	2,999	38.1	7,862	100.0
713	Floor Covering	77	57.0	15	11.1	43	31.9	—		135	100.0
749	Liquors, Malt	1,423	56.9	42	1.7	1,034	41.4	—		2,499	100.0
729	Cotton Factory Products	325	56.0	23	4.0	82	14.1	150	25.9	580	100.0
35	Cotton Linters, Noils and Regins	4,447	54.3	211	2.6	2,704	33.0	830	10.1	8,192	100.0
799	Manufactures and Miscl., NOS	5,875	53.5	1,309	11.9	1,690	15.4	2,112	19.2	10,986	100.0
655	Scrap Paper and Rags	2,204	50.7	45	1.0	180	4.1	1,921	44.2	4,350	100.0
767	Starch	313	48.3	21	3.3	32	4.9	282	43.5	648	100.0
795	Waste Material for Remelting, NOS	309	48.2	92	14.4	240	37.4	—		641	100.0
399	Products of Mines, NOS	6,203	47.7	2,919	22.5	3,873	29.8	—		12,995	100.0
747	Wine	144	46.8	—		164	53.2	—		308	100.0
51	Bananas	53,946	46.0	532	.5	62,664	53.5	—		117,142	100.0
615	Automobiles, freight	190	45.1	—		—		231	54.9	421	100.0
703	Woodenware	46	44.2	58	55.8	—		—		104	100.0
545	Tanning Materials, NOS	6,218	42.7	164	1.1	6,757	46.3	1,443	9.9	14,582	100.0
723	Bagging, Burlap, Cotton, Gunny and Jute, NOS	6,284	40.9	1,420	9.3	199	1.3	7,452	48.5	15,355	100.0
719	Tools and Parts, NOS	63	39.4	—		28	17.5	69	43.1	160	100.0
625	Airplanes, Aircraft and Parts	44	37.6	—		—		73	62.4	117	100.0
763	Food Products, NOS, in cans and packages, not frozen	33,274	33.6	3,493	3.5	13,821	14.0	48,312	48.9	98,900	100.0
583	Manufactured Iron and Steel	7,850	31.2	4,640	18.5	12,502	49.8	119	.5	25,111	100.0
33	Cotton in Bales	39	31.0	—		32	25.4	55	43.6	126	100.0
533	Sodium (Soda) Products	508	26.9	313	16.6	1,066	56	—		1,887	100.0
641	Refractories	88	26.4	—		245	73.6	—		333	100.0

Commodity	Description	New York, N.Y.		Philadelphia, Pa.		Baltimore, Md.		Hampton Roads, Va.		Total	
		Tons	%	Tons	%	Tons	%	Tons	%	Tons	%
587	Iron and Steel Pipes and Fittings, NOS	390	25.4	497	32.3	583	37.9	67	4.4	1,537	100.0
539	Fertilizers, NOS	3,145	24.8	882	6.9	4,740	37.3	3,945	31.0	12,712	100.0
237	Wool and Mohair, NOS	142	24.3	421	72.1	6	1.0	15	2.6	584	100.0
715	Furniture, NOS	32	24.0	—		36	27.1	65	48.9	133	100.0
681	Buildings and Houses, Fabricated and Portable, NOS	32	22.5	—		—		110	77.5	142	100.0
575	Iron and Steel: Billet, Bloom and Ingot	28	22.0	99	78.0	—		—		127	100.0
671	Wallboard	743	21.7	110	3.2	2,499	72.9	77	2.2	3,429	100.0
577	Iron and Steel: Bar, Rod and Slab	20	21.5	—		73	78.5	—		93	100.0
735	Rope, Cordage and Binder Twine, NOS	1,875	21.15	6,736	75.98	247	2.79	7	.08	8,865	100.0
581	Iron and Steel Nails and Wire (Woven and Not Woven), NOS	971	20.3	182	3.8	3,291	68.9	352	7.3	4,796	100.0
657	Newsprint Paper	4,872	19.7	—		18,596	75.3	1,214	4.9	24,682	100.0
759	Sugar	6,913	17.7	2,332	6.0	29,830	76.3	—		39,075	100.0
499	Products of Forests, NOS	7,953	17.2	32,037	69.5	1,853	4.0	4,294	9.3	46,137	100.0
527	Chemicals, NOS	1,175	17.0	5,418	78.4	300	4.3	21	.3	6,914	100.0
61	Oranges and Grapefruit	18	16.7	—		90	83.3	—		108	100.0
617	Vehicles, Motor, NOS	225	16.0	150	10.7	—		1,028	73.3	1,403	100.0
737	Boots, Shoes and Findings, NOS	16	14.7	—		—		93	85.3	109	100.0
611	Vehicles, other than Motor	409	14.5	1,012	35.9	258	9.2	1,137	40.4	2,816	100.0
307	Coke	100	14.3	—		601	85.7	—		701	100.0
573	Iron, Pig	55	13.4	357	86.6	—		—		412	100.0
235	Wool and Mohair, in grease	62	11.8	465	88.2	—		—		527	100.0
411	Lumber, Shingles and Lath	102	11.0	181	19.5	620	66.9	24	2.6	927	100.0
675	Insulating Material, NOS	52	10.6	48	9.7	392	79.7	—		492	100.0
569	Alloys for Steel Manufacture	2,048	8.6	—		21,671	91.4	—		23,719	100.0
535	Aluminum: Bar, Ingot, Pig and Slab	330	8.14	106	2.62	3,610	89.09	6	.15	4,052	100.0
669	Paperboard, Fibreboard and Pulpboard	130	7.7	18	1.1	1,515	90.1	19	1.1	1,682	100.0
661	Wrapping Paper	95	6.8	753	53.8	512	36.6	39	2.8	1,399	100.0
721	Abrasives, other than crude	374	6.7	4,824	86.2	398	7.1	—		5,596	100.0
693	Glass	794	5.8	—		11,624	85.4	1,193	8.8	13,611	100.0
639	Brick, NOS; and Building Tile	49	4.5	—		1,031	95.5	—		1,080	100.0
339	Asphalt	30	2.7	—		1,097	97.3	—		1,127	100.0
667	Printed Matter, NOS	12	2.4	—		—		485	97.6	497	100.0
653	Woodpulp	424	1.9	3,874	17.3	15,487	69.2	2,609	11.6	22,394	100.0
633	Cement, Natural and Portland	231	1.5	4,543	28.8	478	3.0	10,537	66.7	15,789	100.0

No.	Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
319	Ores and Concentrates, NOS	16,389	1.1	49,749	3.3	1,283,888	86.4	136,046	9.2	1,486,072	100.0
695	Glassware, NOS	28	1.1	2,478	96.6	51	2.0	8	.3	2,565	100.0
31	Tobacco, Siftings, Sweeping and Waste	9	.9	20	2.0	985	97.1	—		1,014	100.0
29	Tobacco, Unmanufactured	31	.7	—		314	6.8	4,240	92.5	4,585	100.0
323	Clay and Bentonite	225	.7	33,621	99.2	34	.1	—		33,880	110.0
11	Rice	—		—		83	100.0	—		83	100.0
85	Potatoes, other than sweet	—		—		110	100.0	—		110	100.0
103	Malt, NOS	—		—		17	100.0	—		17	100.0
225	Poultry, Dressed and Frozen	—		—		20	100.0	—		20	100.0
317	Zinc Ore and Concentrates	—		—		66,058	100.0	—		66,058	100.0
321	Barytes	—		—		—		34,781	100.0	34,781	100.0
551	Cellulose Articles, NOS	—		—		28	100.0	—		28	100.0
589	Tanks, NOS	—		—		—		34	100.0	34	100.0
593	Agricultural Implements, Parts, NOS	—		—		5	100.0	—		5	100.0
609	Rails and Railway Track Material, Iron or Steel	—		172	45.5	206	54.5	—		378	100.0
629	Guns, Small Arms and Parts, NOS	—		—		—		859	100.0	859	100.0
635	Cement, NOS	—		—		—		19,470	100.0	19,470	100.0
687	Furnaces, Heaters, Radiators and Parts	—		—		—		12	100.0	12	100.0
731	Synthetic Fibre and Yarns (Rayon or Nylon)	—		—		—		145	100.0	145	100.0
757	Molasses, Residual	—		—		5,066	100.0	—		5,066	100.0
769	Soap and Cleaning and Washing Compounds	—		—		53	100.0	—		53	100.0

RECAPITULATION

Commodity Description	New York, N.Y. Tons	%	Philadelphia, Pa. Tons	%	Baltimore, Md. Tons	%	Hampton Roads, Va. Tons	%	Total Tons	%
1 — *Products of Agriculture* (1-199)	221,726	72.5	5,586	1.8	72,806	23.8	5,876	1.9	305,994	100.0
2 — *Animals and Products* (201-299)	18,552	79.2	2,013	8.6	2,231	9.5	629	2.7	23,425	100.0
3 — *Products of Mines* (301-399)—(Excluding Coal, Coke, Direct Product of Coal and Iron Ore)	38,680	2.3	96,197	5.8	1,355,737	81.6	170,827	10.3	1,661,441	100.0
4 — *Products of Forests* (401-499)	12,416	23.0	32,500	60.2	4,095	7.6	4,975	9.2	53,986	100.0
5 — *Manufactures and Miscellaneous* (501-799)	354,352	49.0	48,463	6.7	209,975	29.1	109,912	15.2	722,702	100.0
6 — *Forwarder Traffic* (950)	66	100.0	—		—		—		66	100.0
Groups 1 to 6	645,792	23.3	184,759	6.7	1,644,844	59.4	292,219	10.6	2,767,614	100.0
Items 311-317-319	30,046		59,490		1,349,946		136,046		1,575,528	
Balance	615,746	51.65	125,269	10.51	294,898	24.74	156,173	13.10	1,192,086	100.0

Witness Mollman's Exhibit No. 3, Pages 1 to 6, and Exhibit No. 2, Pages 110 to 113, and Pages 125 to 129, inclusive, I.&S. Docket No. 6615.